IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.1634 OF 2005

Kanuparthi Subba Rao & ors. : Petitioners.

versus

The State of Maharashtra & ors. : Respondents.

Mr.Subhash Jha i/by Law Global for the petitioners.

Mr.D.S.Mhaispurkar, APP, for the State.

Mr.Satyanarayan i/by Mr.Lalit Jain for Respondent Nos.2 to 4.

CORAM : D.G.DESHPANDE

V.K.TAHILRAMANI JJ.

DATED : APRIL 10, 2006.

P.C.

1. Heard Mr.Jha, the learned counsel appearing for the petitioners, Mr.Satyanarayan, the learned counsel appearing for Respondent Nos. 2 to 4 and the learned APP for the

State/respondent No.1.

2. The prayer in this petition was that proceedings in C.C. No.362/Misc.2005 before the Additional Chief Metropolitan Magistrate, 8th Court at Esplanade, Mumbai be called and the order dated 18.5.2005 be quashed. That order was an order under Section 202 of the Cr.P.C.

3. The learned counsel for the respondent Nos.2 to 4 has pointed out that when the Investigating Officer raised objection to the jurisdiction and submitted his report, the complainant has withdrawn his complaint. Therefore, according to the advocate for the contesting respondent nothing survives in this petition.

4. Mr.Jha, the learned counsel appearing for the petitioners, however, strongly urged that even though the Bombay Court has no jurisdiction, the complainant/respondents tried to invoke jurisdiction of Bombay Court by resorting to illegal and improper means and that amounts to resorting to extra judicial and extra constitutional method of effecting recovery.

This is the wording used in prayer clause (b) of the petition. Therefore, firstly, Mr.Jha, the learned counsel appearing for the petitioners, wants that the complainant/contesting respondents should be saddled with costs. Secondly, he wants that a statement should be made by the complainant/contesting respondents that they shall not file any such complaint against the petitioners in any court in India.

5. When questioned, Mr.Jha, the learned counsel appearing for the petitioners, admits that the present petition is concerned with one complaint mentioned in prayer (a) of the petition. In view of this specific submission and in view of the fact that the original complainant has withdrawn his complaint referred to in prayer clause (a), nothing survives in this petition. Filing of complaint before the Magistrate does not amount to resort to extra judicial and extra constitutional method. Secondly, withdrawal of complaint upon the objection of the Investigating Officer regarding jurisdiction does not entitle the petitioner to any costs. The writ petition is dismissed.

[D.G.DESHPANDE,J]

[V.K.TAHILRAMANI,J]